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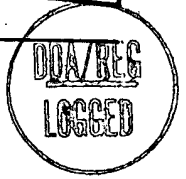
Civil Rights Division

Executive Registry

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Office of the Assistant Attorney General

Washington, D.C. 20530



MAY 21 1987

MEMORANDUM

TO: Heads of Selected Executive Agencies

FROM: Wm. Bradford Reynolds *WBR*
 Assistant Attorney General
 Civil Rights Division

SUBJECT: Technical Assistance Guide

Over the last one and one-half years I have sent you three sets of Technical Assistance Guides (TAG's) to assist your agency in implementing section 504 of the Rehabilitation Act of 1973, as amended, in your federally conducted programs. Enclosed is another TAG for your agency's use.

The attached TAG, entitled "Section 504 Transition Plan and Self-Evaluation Information," seeks to provide information that will help your agency complete the transition plan and self-evaluation requirements. In addition, staff from this Division's Coordination and Review Section will be contacting your agency to invite members of your staff to meet so that we may provide additional assistance with respect to these requirements. Division staff will also be available to respond to your individual requests for assistance.

If your staff has any technical questions concerning the enclosed TAG or any suggestions for suitable topics for future guidance, please contact Bert Keys, Jr., of the Coordination and Review Section, at 724-2218 Voice, 724-7678 TDD. All routine business concerning federally conducted programs should, however, be directed to the agency coordinators and attorneys within the Coordination and Review Section who are specifically assigned to work with your agency.

Enclosures

REGISTRY

FILE: 60-7

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section

TECHNICAL ASSISTANCE GUIDE

TAG-5-87-1

1. Title: Section 504 Transition Plan and Self-Evaluation Information
2. Purpose: The purpose of this Technical Assistance Guide (TAG) is to provide Federal agencies with information to assist them in completing the transition plan and self-evaluation required by their regulations implementing section 504 for federally conducted programs. This TAG provides information about these requirements as they affect the non-employment programs and activities of Federal agencies.

Section 501 of the Rehabilitation Act, which is administered by the Equal Employment Opportunity Commission (EEOC), addresses employment discrimination. Federal agencies should refer to the regulation implementing section 501 and the supporting information developed by EEOC for guidance about eliminating discrimination on the basis of handicap in their employment programs.^{1/}

This TAG provides a general framework for completing a transition plan and self-evaluation. Agencies are encouraged to be creative and flexible in their approach to fulfilling their section 504 requirements. Because of the differences among agency programs, there is no single "right" way to complete the transition plan and self-evaluation.

3. Background: In 1978 Congress amended section 504 of the Rehabilitation Act of 1973 to extend the coverage of section 504 to programs and activities conducted by the Executive branch of the Federal government. Regulations implementing section 504 call upon Federal agencies to complete a transition plan, when structural changes are necessary to make one or more of their programs accessible to individuals with handicaps, and to conduct a self-evaluation of their programs and activities.

^{1/} The regulation implementing section 501 and related information can be obtained from the Equal Employment Opportunity Commission 2401 "E" St., N.W., Washington, D.C. 20506, (202) 634-6260 Voice, (202) 634-7057 TDD.

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A transition plan must set out the steps necessary to make the facilities used by the agency accessible. Regulations implementing section 504 generally require that agencies determine if physical barriers in facilities they occupy cause discrimination against individuals with handicaps by preventing or interfering with their participation in programs conducted in those facilities. Barriers that result in discrimination must be removed or the program otherwise modified to ensure that individuals with handicaps have access to programs and activities. The transition plan must detail how and when any necessary structural changes will be made. Structural changes are to be made as soon as possible but generally no later than three years from the effective date of the agency's final regulation. The plan is to be completed with the assistance of individuals with handicaps and other interested persons and to be available for review by interested persons.

Through the self-evaluation, the agency identifies and changes any policies or practices that discriminate against qualified individuals with handicaps. The net effect of these requirements is to cause Federal agencies to review their facilities, programs, policies, and practices and to make changes required to permit individuals with handicaps to participate fully in the agency's programs and activities.

4. The Transition Plan Process:

(1) Inventory the programs and activities conducted by the agency.

In simple terms, a federally conducted program or activity is anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: those involving general public contact as part of ongoing agency operations and those directly administered by the agencies for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the agency's facilities (libraries,

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cafeterias, or auditoriums). Activities in the second category include programs that provide Federal services or benefits. This regulation does not, however, apply to programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

- (2) Inventory the facilities in which the agency's programs and activities are conducted. Each facility used in whole or in part by the agency should be included in this inventory. In addition to buildings of all types the inventory should also include such things as equipment, vehicles and other means of conveyance, parking lots, sidewalks, and trails. The inventory should include information about the age of the facility and renovations that have been performed on the facility. It is useful to know the exact ownership status of the building, i.e., is the building owned by the agency or GSA or is it a private building leased by the agency or GSA? Determining the age and ownership status of the facility as well as gathering information about renovations that the facility has undergone will help the agency determine if the facility or parts of the facility are subject to the Architectural Barriers Act of 1968 (the Barriers Act). Facilities that are covered by the Barriers Act should have been built in a manner that conforms to certain architectural accessibility design standards. It is important to determine if the facility is covered by the Barriers Act in order to prepare an appropriate plan to achieve accessibility. Facilities covered by the Barriers Act must be evaluated against the particular design in force at the time the facility was constructed (step 3 below) and cannot be properly evaluated by the procedure for buildings not subject to the Barriers Act described in step 5 below.^{2/} The inventory should also include information about the size of the facility and the amount of space occupied by the agency, as well as information about other agencies that occupy the facility.

^{2/} For a more complete discussion of the overlapping coverage of the Barriers Act and section 504 refer to Technical Assistance Guide 5-86-3 available from the Department of Justice, Coordination and Review Section, 320 First St., N.W., Washington, D.C. 20534, (202) 724-2218 Voice, (202) 724-7678 TDD.

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- (3) Evaluate Barriers Act facilities and correct any problems identified. Facilities subject to the Barriers Act must be treated in a manner substantially different from facilities subject only to section 504 program accessibility requirements. If, as a result of completing step 2, facilities subject to the Barriers Act are identified, they must, unlike facilities only subject to section 504, be strictly evaluated against the appropriate architectural accessibility design standards.^{3/} Deviations from the standards must be corrected and the facility made to conform to the standards. Facilities that meet Barriers Act standards will also meet section 504 architectural accessibility design standard requirements. However, programs conducted in facilities that meet Barriers Act standards may not meet section 504 program accessibility requirements.
- (4) Analyze how the programs or activities are conducted in the facilities. This analysis should provide the agency with information about how closely and in what ways the program is tied to and depends on the facility. This is important because some programs and activities are closely tied to the facility in which they are conducted and some are not. The degree to which the program is dependent on the facility can have a significant influence over the strategy that can be employed to achieve program accessibility. For example, a training program for non-federal personnel that requires the use of special equipment that is not portable is highly dependent on the facility in which the equipment is located. In order to make this training program accessible, access to the facility is essential. In contrast, a hearing in which agency representatives listen to complaints or opinions expressed by members of the public is not highly dependent on the facility in which it takes place. In order to make the hearing accessible, the accessibility of any particular facility may not be important because the hearing can be held in any number of facilities, and the most accessible facility can be used.
- (5) Survey the facilities not subject to the Barriers Act and develop information that will help determine if barriers exist to program access. To complete this step

^{3/} See Attachment A to Technical Assistance Guide 5-86-3, for specific design standards applicable to facilities subject to the Barriers Act since 1968.

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the agency should conduct a survey of its facilities, taking and recording the measurements of building elements that are key to achieving access. Many of the building elements that are important for accessibility are those for which specifications are set by architectural accessibility design standards. There are several such standards. The one used by the Federal government and the one required by the Barriers Act is the Uniform Federal Accessibility Standards (UFAS).^{4/} Some building elements covered by UFAS are more important in existing facilities than are others. The elements that are key to general accessibility in existing facilities are: entrances, passageways, toilet rooms, drinking fountains, and elevators. Occasionally, other building elements are also crucial because of the particular nature of the program or facility. In some cases accessibility standards for these building elements have not been established. Nevertheless these building elements may have to be evaluated to determine if individuals with handicaps can use them. Care should be taken to avoid making accessibility judgments when conducting the survey, e.g., asking questions like "is the door wide enough" or "is the toilet room accessible." Instead, this survey should simply record measurements for analysis in the next step of the process.

- (6) Determine if there are physical barriers to program participation in the facilities. This step is the most difficult step in the process because it requires agencies to make judgments about the effect of the facility on access for individuals with handicaps. There is no simple way of completing this step. There is no short cut that eliminates the necessity of making judgments and there is no way to guarantee that the judgments made cannot be challenged. There is also no automatic way of making these judgments, such as a check list that elicits yes or no responses. Using the information developed in steps 1 to 5, the agency should determine the extent to which a particular building's elements that do not comply with the design standards constitute barriers to program participation. Because UFAS provides guidance about the way building elements should be constructed to achieve

^{4/} Copies of UFAS are available from the Department of Justice, Coordination and Review Section, 320 First St., N.W., Washington, D.C. 20534, (202) 724-2218 Voice, (202) 724-7678 TDD, and the Architectural and Transportation Barriers Compliance Board, 330 C Street, S.W., Washington, D.C. 20202-2101, (202) 755-6454 Voice, (202) 426-6033 TDD.

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maximum accessibility, comparing the survey information developed in step 5 with UFAS will give an indication of how far the facility is from the ideal. Variance from UFAS does not, by itself, mean that a building element constitutes a significant problem in terms of program accessibility. Consideration should be given to how great that variation is and what its effect is on the participation of individuals with handicaps in the federally conducted program. The agency must then decide if the effect on access is significant enough to warrant making physical changes in the facility or otherwise modifying the program. The product of this step is a list of problems that must be resolved if the agency's program is to be accessible.

- (7) Develop solutions to the problems identified in Step 6. In developing solutions consider two strategies: making nonstructural changes in the program to avoid the effects of physical barriers and making structural changes to eliminate physical barriers. Often program accessibility can be achieved by making either structural or nonstructural changes. If so the agency has a choice. Both strategies have advantages and disadvantages. Although structural changes to facilities are sometimes expensive, their cost is a one-time cost. Making structural changes frequently enhances the usefulness of the facility in other ways than promoting accessibility for disabled persons. Nonstructural changes are usually not expensive, but can impose some administrative burden to implement and frequently require action on the part of the agency over a long period of time.

The agency should also develop priorities for making structural changes. For example, solving an access problem that prohibits individuals with handicaps from entering the agency's only or principal facility should obviously be a very high priority item to be attended to as soon as possible. Making minor adjustments to features that do not conform precisely to the UFAS requirements but that do not significantly impede access, such as adjusting the level of the doorway thresholds in the facility from 5/8" to 1/2", should be treated as a lesser priority.

When solutions to the accessibility problems have been developed, the agency should prepare a draft transition plan. The transition plan should identify the necessary structural changes, set forth a timetable for making

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the changes, and identify the person responsible for making the changes. The draft plan should also specify that the structural changes will be made in compliance with UFAS. Although the agency may take up to three years to make the structural changes called for in the transition plan, any nonstructural changes needed to achieve program accessibility must be made within 60 days of the effective date of the regulation.

- (8) Provide interested groups with the opportunity to review and comment on the draft transition plan. While this can be accomplished in several ways, one way is to invite the public to comment on the transition plan. A notice asking for comment can be published in the Federal Register and, in addition, interested groups can be notified by mail of the opportunity to comment. Copies of the plan may be made available at locations around the country or sent to persons requesting a copy. Experience with recipients of Federal financial assistance who have involved individuals with handicaps and other interested persons in the self-evaluation process has shown that involvement to be beneficial in a number of ways. For example, individuals with handicaps can frequently identify accessibility problems quickly and accurately and assist in developing remedies to those problems that are efficient and cost-effective. In addition, individuals with handicaps may be able to provide important insights on ways to make building elements, not covered by architectural accessibility design standards, accessible. After comments are received and reviewed, the draft transition plan should be modified as necessary and then fully implemented. The final plan should be kept on file and made available to interested persons on request.

5. Relationship with the General Services Administration (GSA):

One of GSA's major functions is to act as the Federal government's landlord. In this capacity it builds, operates, alters, and leases facilities. Most Federal agencies are housed in facilities owned, operated, or leased by GSA. Thus, developing and implementing a transition plan will necessarily involve close coordination between the agency and GSA. Each Federal agency is responsible under section 504 for ensuring that its federally conducted programs are accessible to individuals with handicaps. This responsibility cannot be avoided or shifted to GSA on the grounds that GSA controls the building in which the agency is

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located. Each agency is responsible for determining if its own programs are accessible and for completing and implementing a transition plan if one is necessary. In doing this, agencies should cooperate with GSA and other Federal agencies with whom they share the facility. There are a number of concrete ways agencies can work with GSA to achieve the goals of section 504 as well as fulfill the specific requirements of the section 504 regulations.

- The easiest way to make a facility accessible is to build it so that it complies with the relevant architectural design standard, in this case UFAS. All buildings that are now being built by or for GSA must comply with UFAS.
- If a leased building is already occupied, the best time to persuade a building owner to make structural changes in the facility is when the lease is up for renewal. Agencies should examine the lease for the facility they occupy and work with GSA to modify the lease as appropriate to remedy access problems.
- GSA enters into new leases for buildings on a continuing basis. Agencies that will be affected by this process should inspect the building that GSA is proposing to lease for them, to ensure its accessibility. If, because it is a leased building, it is subject to the new construction provisions of section 504, agencies should work with GSA to include accessibility provisions in the lease.
- When it is determined that structural changes are necessary in a GSA controlled building, the agency should work with GSA to develop a timetable for making the necessary changes. Usually the main problem is the question of who will pay for the changes. GSA is authorized to alter or otherwise arrange for alterations for occupant agencies on either a no-cost or reimbursable basis. Agencies should consider having GSA alter the facility on a reimbursable basis.

6. The Self-Evaluation Process:

- (1) Review the inventory of programs and activities conducted by the agency that was compiled as a part of the transition plan process.

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- (2) Collect and document the policies and practices that govern the administration of the agency's programs and activities. An agency's policies may be in the form of administrative manuals, policy directives, guidance memoranda, or may simply be a matter of customary practice. In fact, some policies may not be written down at all. It is important that this review be complete, both to ensure that all relevant policies are identified and to enable the agency to identify potential problem areas when no policy exists.
- (3) Analyze how the agency's policies and practices affect individuals with handicaps who seek to participate in the agency's programs and activities. The agency must determine what conditions must be present for persons with different kinds of handicaps to participate fully in the agency's programs and activities. In this analysis, the agency must take into account the fact that discrimination can happen not only as a result of what is in its policies but also as a result of what is not in its policies.

Some of the areas that should be examined and addressed are discussed briefly below. This is not an exhaustive list. Additional information relevant to the transition plan and self-evaluation process can be found in the Technical Assistance Guides listed under the Resources section (section 7) of this TAG.

- Any policy that excludes or limits the participation of individuals with handicaps in the programs offered by the agency should be carefully examined. If the policy is retained, the self-evaluation should contain a thorough justification for the policy.
- The agency should examine how it currently notifies the public and its employees about its nondiscrimination policies and how it can best do this with respect to individuals with handicaps.
- Procedures for processing complaints of discrimination on the basis of handicap and for resolving grievances should be developed.
- If contractors are used to conduct part of the agency's program, the agency's procurement regulation should be modified to ensure that the contractors are aware that they must comply with section 504 when performing activities on behalf of the agency.

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- Consideration should be given to the need to enable hearing-impaired persons to communicate with the agency by telephone. Agencies should consider purchasing or sharing a telephone device for the deaf (TDD), and listing the number in the commercial telephone directory. It may be appropriate to install a TDD in the public affairs office. Consideration should also be given to using the services of a TDD relay system. The Department of the Treasury is currently operating a relay for the Federal government.^{5/}

Commercial relay systems are also available in some cities. Care should also be taken to include a TDD number for further information in the regulations published by the agency.

- A procedure should be established to ensure that all new facilities occupied by the agency are fully accessible.
- It should be determined if agency staff members are familiar with policies designed to enable individuals with handicaps to participate in the program. If needed, special training sessions may be appropriate or handicap concerns can be factored into regular on-going training programs.
- If the agency is involved in a transportation program, careful consideration should be given to making it usable by individuals with handicaps.
- A policy on the provision of readers for visually-impaired persons, interpreters for hearing-impaired persons, and amanuenses for manually-impaired persons should be established. A method of securing these services should be developed along with guidance on when and where these services will be provided.
- A procedure should be developed to ensure that decisions about undue financial and administrative burdens that might be imposed by section 504 are made properly and expeditiously.

^{5/} Information about the Federal TDD relay can be obtained by contacting the Department of Treasury, 1500 Pennsylvania Avenue, N.W., Room 1121, Wash., D.C. 20220, (202) 377-9555 Voice and (202) 566-2673 TDD.

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- Consideration should be given to how best to make meetings accessible to hearing-impaired persons. It may be appropriate to purchase an assistive listening device (ALD) and establish a policy for its use.
 - The agency should review the printed matter it uses in its program to ensure that it is usable by visually-impaired persons.
 - A policy of making agency documents available to the public on audio tape or in Braille should be considered.
 - If television, video, or other audiovisual presentations are used as part of the program, captioning these presentations should be considered.
- (4) Make and document changes and additions to agency policy. Unlike the structural changes that might be contemplated as a result of the transition plan process, the changes required by the self-evaluation process should not require an extended period of time to complete.
- (5) Obtain comments on the draft self-evaluation from individuals with handicaps and other persons. This can be done in various ways. One way to solicit comment is to publish a notice in the Federal Register announcing the availability of the draft and asking for comments. The notice should inform interested persons where they could review a copy of the self-evaluation and instruct them how to file their comments. Based on these comments the self-evaluation should be revised as necessary, put in final form, and fully implemented. Periodically, the self-evaluation should be reviewed and updated to ensure that new policies are not causing discrimination and that individuals with handicaps continue to be able to participate fully in the agency's program.

7. Resources:

Summarized below are Technical Assistance Guides (TAG's) that are available upon request from the Civil Rights Division, Department of Justice. These TAG's may be helpful to agencies in developing and implementing section 504 transition plans and self-evaluations. To order the TAG's listed, contact Bert Keys, Jr., of the Coordination and Review Section, 320 First Street, N.W., Washington, D.C. 20534 (202) 724-2218 Voice, (202) 724-7678 TDD.

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TAG-5-84-1: Interpreter Referral Service

This TAG lists Interpreter Referral Service information, both for the Greater Washington Metropolitan Area and nationally. In addition, information is provided about the National Center for Law and the Deaf's (NCLD) Newsletter.

TAG-5-84-2: Telecommunication Devices for Deaf Persons (TDD's)

This TAG gives some background information on the basic function of TDD's and lists some of the businesses around the country that manufacture and sell them.

TAG-5-84-3: Obtaining Tape Recorded or Braille Transcriptions of Documents for Use by Visually-Impaired Persons

This TAG lists resources in the Washington metropolitan area for tape recording and braille transcription. It also recommends that persons interested in obtaining similar information for other areas of the country should contact the Library of Congress' National Library Service for the Blind and Physically Handicapped.

TAG-5-84-4: Closed Captioning

This TAG gives basic information on closed and open captioning and specifically discusses information about the National Park Service's captioning program and that of the National Captioning Institute.

TAG-5-84-5: Sources of Information on Accessible Design, Disability Research, and the Provision of Services to Handicapped Persons

This TAG provides Federal agencies with an annotated list of institutional sources in Washington, D.C., that either can provide technical assistance or have facilities for conducting research on accessible design, disability, and the provision of services to individuals with handicaps.

TAG-5-84-6: Published Resources Concerning Section 504 of the Rehabilitation Act of 1973, as Amended and the Provision of Services to Handicapped Persons

This TAG gives a partial listing of publications (directories, handbooks, legal reporting services, and newsletters), which concentrate in part or in whole on section 504 issues.

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TAG-5-85-1: Access to Public Meetings

This TAG provides information on steps that will enable hearing-impaired, visually-impaired, and mobility-impaired persons to have access to public meetings. This TAG does not address the architectural accessibility of the facility in which the meeting is held.

TAG-5-85-2: Assistive Listening Devices (ALDs)

This TAG provides information on special devices that can be used to improve communication with hearing-impaired persons. It discusses the problems ALD systems are intended to solve or ameliorate and the types, costs, advantages and disadvantages of different ALDs.

TAG-5-85-3: Access to Printed Information by Visually-Impaired Persons

This TAG provides information on steps that will enable visually-impaired persons to have access to printed materials.

TAG-5-86-1: The President's Committee on Employment of the Handicapped (PCEH) and Related Organizations

This TAG provides recipients of Federal financial assistance and Federal agencies with information on an important resource on employment of individuals with handicaps and other issues related to the implementation of section 504 of the Rehabilitation Act of 1973.

TAG-5-86-2: Telephone Devices for People Who Are Hard-of-Hearing

This TAG discusses technological devices that help people who are hard-of-hearing effectively use the telephone.

TAG-5-86-3: Coverage of the Architectural Barriers Act of 1968, as amended (Barriers Act) and section 504 of the Rehabilitation Act of 1973, as amended (section 504)

This TAG explains the requirements of the Barriers Act and section 504 as they affect the accessibility of buildings for individuals with physical handicaps. This guide also provides information to assist recipients and Federal agencies to comply with the requirements of these statutes in light of their overlapping coverage.